

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

Received

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Copyright Royalty Board

In the Matter of)

DETERMINATION OF ROYALTY RATES) Docket No. 14-CRB-0001-WR
FOR DIGITAL PERFORMANCE IN SOUND) (2016-2020)
RECORDINGS AND EPHEMERAL)
RECORDINGS (WEB IV))

SUBMISSION OF SUPPLEMENTAL WRITTEN REBUTTAL STATEMENTS OF
iHEARTMEDIA, INC.

Pursuant to the Judges' April 2, 2015 Order Denying Licensee Services' Motion To Strike SoundExchange's "Corrected" Written Rebuttal Testimony of Daniel Rubinfeld and Section III.E of the Written Rebuttal Testimony of Daniel Rubinfeld and Granting Other Relief, iHeartMedia, Inc. respectfully submits the attached supplemental rebuttal testimony of Professors Daniel Fischel and Douglas Lichtman, and Jeffrey Littlejohn, for the consideration of the Judges. This supplemental rebuttal testimony is limited to rebutting the new contents of the "Corrected" written rebuttal testimony of Prof. Rubinfeld and the analyses contained in Part III.E of Prof. Rubinfeld's original written rebuttal testimony.

Respectfully submitted,

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April 21, 2015

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

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<i>In re</i>	:	
	:	Docket No. 14-CRB-0001-WR
DETERMINATION OF ROYALTY RATES AND	:	(2016 – 2020)
TERMS FOR EPHEMERAL RECORDING AND	:	
DIGITAL PERFORMANCE OF SOUND	:	
RECORDINGS (WEB IV)	:	
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**SUPPLEMENTAL REBUTTAL TESTIMONY OF
DANIEL R. FISCHER AND DOUGLAS G. LICHTMAN**

I. BACKGROUND AND SUMMARY

1. We understand that, subsequent to his submission of rebuttal testimony in this matter, SoundExchange's expert Professor Daniel L. Rubinfeld submitted additional "corrected" rebuttal testimony, in which redactions in his original rebuttal testimony were removed.¹ These unredacted portions of Professor Rubinfeld's testimony pertain to certain agreements between Apple and major record labels.² Professor Rubinfeld concluded that these agreements form an appropriate benchmark for the statutory rate, and he claimed that, based on 13 months of *ex post* performance, Apple has paid, on average, [REDACTED]

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1. United States Copyright Royalty Judges, *In re Determination of Royalty Rates and Terms For Ephemeral Recordings And Digital Performance Of Sound Recording (Web IV)*, Docket no. 14-CRB-0001-WR (2016-2020), "Corrected Written Rebuttal Testimony of Daniel L. Rubinfeld," February 22, 2015 ("Rubinfeld Corrected WRT"). (We understand that the Rubinfeld Corrected WRT was in fact submitted after the date indicated on the document.)
 2. *Id.*, at Appendix 2.

██████████.³ He further claimed that payments under these agreements imply royalty rates ██████████
 ██████████, if considered as a percentage of revenue.⁴

2. Professor Rubinfeld's corrected rebuttal testimony also made claims regarding various other agreements between major record labels and streaming music services, including Beats Music's "The Sentence," Spotify's "Shuffle" service, Rhapsody's "unRadio," and Nokia's "MixRadio."⁵ We refer to these four as the "Section III.E services," in reference to the section of his testimony in which they are discussed. Professor Rubinfeld claimed that these services provide corroborative evidence of the reasonableness of his conclusions regarding the appropriate statutory rate.⁶ In particular, he claimed that these agreements indicate performance rates that are equal to or higher than:⁷ ██████████
 ██████████
 ██████████¹¹

3. Counsel for iHeartMedia asked us to review the claims made by Professor Rubinfeld regarding the agreements with Apple and the Section III.E services in light of our previous testimony in this case. We also reviewed a number of documents related to these agreements that we understand were just recently produced in discovery. These are listed in

3. *Id.*, at Appendix 2 ¶¶ 7-8, Appendix 2B & 2C (row "Y"). Professor Rubinfeld applied a fixed annual increase to these rates in attempting to apply these agreements as benchmarks for the 2016 – 2020 period. *Id.*, at ¶¶ 31 & 43. We addressed this annual increase approach in our written rebuttal testimony, and incorporate that discussion by reference. United States Copyright Royalty Judges. In re Determination of Royalty Rates and Terms For Ephemeral Recordings And Digital Performance Of Sound Recordings (Web IV). Docket No. 14-CRB-0001-WR (2016-2020), "Rebuttal Testimony of Daniel R. Fischel and Douglas G. Lichtman," February 22, 2015 ("Fischel / Lichtman WRT"), at ¶¶ 111-115.
4. Rubinfeld Corrected WRT, at Appendix 2B & 2C (row "Z").
5. *Id.*, at ¶¶ 177-201.
6. *Id.*, at ¶ 190.
7. In the cases of Rhapsody "unRadio" and Nokia "MixRadio," Professor Rubinfeld claimed that these agreements ██████████
 ██████████ *Id.*, at ¶¶ 197 & 200.
8. *Id.*, at ¶¶ 183-184.
9. *Id.*, at ¶ 193.
10. *Id.*, at ¶ 197.
11. *Id.*, at ¶¶ 200-201.

Appendix A, along with all other documents relied upon. Importantly, the materials made available to us were conspicuously incomplete. Specifically, unlike, for instance, the materials we used to analyze the agreement between Warner and iHeartMedia, which included significant testimony from fact witnesses from both sides, the materials made available to us with respect to the Section III.E services included no testimony from fact witnesses at all, and the materials made available to us with respect to the Apple agreements included no testimony from record label witnesses and limited testimony from a single Apple deponent. As we explain below, this raised for us significant concerns as to whether Professor Rubinfeld has interpreted these various agreements correctly, because agreements like these cannot be reliably analyzed without context as to the negotiations that took place, and information about other economic relationships that exist between the parties.

4. Nevertheless, we were able to reach several conclusions with respect to this new information and Professor Rubinfeld's interpretation of it. Most importantly, we concluded that these agreements do not change our view that, if unconstrained by government regulation, willing buyers and willing sellers would negotiate royalty rates for non-interactive services eligible for the statutory license of approximately \$0.0005 per performance.¹² We also concluded that Professor Rubinfeld's analyses of these agreements are unreliable for at least four reasons. First, all of these licenses [REDACTED], and we understand that, in the absence of a direct license, [REDACTED]. The negotiating parties appear to have contemporaneously recognized this [REDACTED] and adjusted the terms of the agreements to account

12. United States Copyright Royalty Judges, In re Determination of Royalty Rates and Terms For Ephemeral Recordings And Digital Performance Of Sound Recordings (Web IV), Docket no. 14-CRB-0001-WR (2016-2020), "Amended Testimony of Daniel R. Fischel and Douglas G. Lichtman, January 12, 2015 ("Fischel / Lichtman WDT"), at ¶ 11.

for it, but Professor Rubinfeld nevertheless ignored [REDACTED] when he proposed these services as benchmarks or corroborative evidence for the statutory license. Second, [REDACTED], as Professor Rubinfeld assumes, the terms of the direct licenses would have been strongly affected by the shadow of the statutory license, yet Professor Rubinfeld did nothing to account for that important, distortive influence. Third, Professor Rubinfeld provided no support either for his assumption that the agreements he analyzed can be considered in isolation from other agreements between the same parties, or his related assumption that all payments discussed in these agreements are in fact properly attributable to webcasting. [REDACTED] [REDACTED]. Finally, with respect to the Apple agreements, Professor Rubinfeld not only improperly (and selectively) relied upon *ex post* performance to estimate the relevant effective royalty rates, but his calculations are in any case fundamentally unreliable and yield substantially inflated effective rates. Indeed, and in sharp contrast to Professor Rubinfeld's conclusions, available evidence indicates that, at the time the agreements were signed, [REDACTED]

II. AVAILABLE EVIDENCE CONTRADICTS PROFESSOR RUBINFELD'S ASSUMPTION [REDACTED]

5. Professor Rubinfeld repeatedly claimed that the services at issue [REDACTED] [REDACTED] and this assumption is the basis on which he concluded that

they can serve as reasonable benchmarks or corroborative evidence for his conclusions.¹³ This assumption is completely at odds with Professor Rubinfeld's own calculations. As noted above, Professor Rubinfeld claimed that, in almost every case, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁴

6. In fact, we understand that all of these services do [REDACTED]
[REDACTED] Therefore, we understand that, absent a direct license, [REDACTED].¹⁵ By contrast, in the 29 direct license agreements we analyzed in our direct testimony, the webcaster (iHeartMedia or Pandora) [REDACTED], and we understand

[REDACTED]
[REDACTED].

7. Available evidence indicates that the record labels repeatedly recognized [REDACTED]
[REDACTED], in some cases characterizing the

13. Rubinfeld Corrected WRT, at ¶ 180

[REDACTED] ; ¶ 195

[REDACTED] ; ¶ 196

[REDACTED] ; ¶ 199

Appendix 2, ¶ 1

14. Professor Rubinfeld acknowledged that services would not rationally pay more than the statutory rate. Rubinfeld Corrected WRT, at ¶ 60 ("for services that can use the statutory license, the statutory rate caps their willingness to pay since they can unilaterally choose to take a license or not.")

15. [REDACTED]
[REDACTED]

services at issue as [REDACTED]

[REDACTED]. For example, Professor Rubinfeld claimed with respect to Rhapsody's "unRadio" service that, [REDACTED] and thus concluded that per-performance rates of [REDACTED] paid by Rhapsody for this service "further confirm the reasonableness of [his] proposal."¹⁶

8. By contrast, in a contemporaneous analysis written at the time of the negotiations with Rhapsody, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁷

9. Similarly, Rhapsody itself characterized the [REDACTED] per-performance rate that Professor Rubinfeld points to as [REDACTED]

[REDACTED]¹⁸ Indeed, the actual license agreements refer to unRadio as providing [REDACTED]
[REDACTED]
[REDACTED]¹⁹ Thus, Professor Rubinfeld's claims about Rhapsody unRadio are directly contradicted by the license

16. *Id.*, at ¶¶ 196-198. Professor Rubinfeld also claims that these services may in some cases [REDACTED]

Id., at ¶ 197.

17. SNDEX0411140 (emphasis added; we understand that unRadio [REDACTED] at the time of this email).

18. SNDEX0372963-965, at 0372963 [REDACTED]
[REDACTED])

19. See, e.g., "Letter Agreement" between Warner Music Inc. and Rhapsody International Inc., April 21, 2014 (SNDEX0144893-7), at SNDEX0144895.

[REDACTED]
[REDACTED]
[REDACTED]²³

12. As discussed in our original rebuttal testimony, we understand that Nokia's MixRadio service similarly [REDACTED]

[REDACTED]²⁴ Indeed, record label executives referred to it as [REDACTED]
[REDACTED]²⁵

13. In his analysis of Nokia MixRadio, Professor Rubinfeld also overlooked important terms in the agreements [REDACTED]. For

example, we understand that under Nokia's agreement with Universal, performances [REDACTED]

[REDACTED]²⁶ Additionally, the agreement also appears to [REDACTED]

[REDACTED]²⁷ Professor Rubinfeld did not account for these [REDACTED]
[REDACTED] but focused only on [REDACTED]
[REDACTED]
[REDACTED]

14. With respect to Spotify's "Shuffle" service, we understand that users can

[REDACTED]

[REDACTED] Professor Rubinfeld's rebuttal testimony claims that the Shuffle service

23. SNDEX0451152-159, at 0451158.

24. [REDACTED]

25. See SNDEX0340788-790, at 0340788 [REDACTED]
[REDACTED]. See also SNDEX0337901-4 at SNDEX0337901, SNDEX0340252-4, SNDEX0340255.

26. Section 1 of "Restated Digital Product Agreement" between Universal International Music B.V. and Nokia Corporation dated March 1, 2013 (SNDEX0023531-3659), at SNDEX0023536, SNDEX0023583.

27. *Id.*, at SNDEX0023590 [REDACTED]
[REDACTED]

provides a “conservative” benchmark for non-interactive services,²⁸ whereas previously, in his direct testimony, he correctly explained that the Shuffle service “provides elements of interactivity.”²⁹ Consistent with Professor Rubinfeld’s pre-rebuttal view of the Shuffle service, one music industry expert extensively relied upon by Professor Rubinfeld in his testimony stated in an industry publication that “[b]eing able to create a playlist from a single album and then listening to it all in shuffle mode simply is on-demand in all but name.”³⁰ [REDACTED]

[REDACTED]

[REDACTED]³¹

15. It appears that Spotify itself [REDACTED]

[REDACTED] Prior to launching its Shuffle service in December 2013, Spotify appears to have offered a service that operated under the statutory license.³² When it made the switch from that statutory service to the Shuffle service, Spotify [REDACTED]

[REDACTED]

28. Rubinfeld Corrected WRT, at ¶ 195.

29. Rubinfeld WDT, at ¶ 50 (footnote 22).

30. Mark Mulligan (2015) “The Case for a Freemium Reset,” <https://musicindustryblog.wordpress.com/2015/03/11/the-case-for-a-freemium-reset/>. Professor Rubinfeld relied upon Mr. Mulligan’s findings in Rubinfeld WDT, at Exhibits 6, 7A, 7B, & 7C, as well as in Rubinfeld Corrected WRT, at ¶ 203.

31. See, e.g., SNDEX0335573-4 [REDACTED]

[REDACTED]; see also SNDEX0310170 [REDACTED]

32. SPOT000001-36. at 000035-36 [REDACTED]

[REDACTED]; see also United States Copyright Royalty Judges, In re Determination of Royalty Rates and Terms For Ephemeral Recordings And Digital Performance Of Sound Recording (Web IV), Docket no. 14-CRB-0001-WR (2016-2020), “Report of David Blackburn, Ph.D.,” October 6, 2014, at ¶ 23 (indicating Spotify as having a statutory service during 2013 and noting that “As of 2014, I understand that Spotify no longer makes statutory payments.”)

[REDACTED]³³ See Exhibit A, which plots what we understand to be [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁴

16. It is true that Apple and the Section III.E services [REDACTED]
[REDACTED]; however, this does not mean that Professor Rubinfeld was correct in ignoring [REDACTED]
[REDACTED]. As one Sony executive explained the general rule, [REDACTED]
[REDACTED]³⁵

That [REDACTED] is important in determining royalty rates also follows from Professor Rubinfeld's own analysis of the findings of the consumer valuation survey produced by one of SoundExchange's other experts, Professor Daniel McFadden.³⁶ Specifically, Professor Rubinfeld argued that royalty rates paid by these services should be proportional to the consumer valuations estimated by Professor McFadden.³⁷

17. Professor McFadden estimated the additional consumer valuation placed on a music service [REDACTED], relative to a service

33. SPOT000047-SPOT000054, at SPOT000050-053. [REDACTED]

34. [REDACTED] SNDEX0126529-37, at 31.

35. SNDEX0338698.

36. Professor Rubinfeld relied upon Professor McFadden's testimony in several instances. Rubinfeld WDT, at ¶¶ 171, 209, & Exhibit 14.

37. *Id.*, at ¶¶ 171-2. [REDACTED]

without [REDACTED].³⁸ By comparison, Professor McFadden's study estimated that the additional consumer valuation placed on [REDACTED] would be nearly as large, [REDACTED], relative to an equivalent service without [REDACTED].³⁹ Yet Professor Rubinfeld nevertheless claimed that [REDACTED] was "similar" to a non-interactive service and offered [REDACTED] royalty rates as corroboration for what non-interactive services should pay.⁴⁰

18. Similarly, we understand that [REDACTED] [REDACTED]. Professor McFadden also estimated a large additional consumer value placed on [REDACTED], relative to a service without [REDACTED].⁴¹ Again, Professor Rubinfeld nevertheless offered these services' rates as benchmarks or corroborative evidence for the statutory rate. Finally, we also understand that [REDACTED], and in Professor McFadden's study, [REDACTED] also appear to have substantial value; a service with [REDACTED] would be valued at [REDACTED] than a service without this feature.⁴²

19. We do not have an opinion about the reliability of Professor McFadden's survey, but to the extent it provides any relevant evidence, it indicates that Professor Rubinfeld's

38. Copyright Royalty Board, In the Matter of Determination of Rates and Terms for Digital Performance in Sound Recordings and Ephemeral Recordings (Web IV), Docket No. 14-CRB-0001-WR, "Testimony of Daniel L. McFadden" ("McFadden WDT"), October 6, 2014, at ¶ 55 (Table 4, "Weighted, US users (future)" column, indicating [REDACTED] valuation on [REDACTED]. This appears to be the column of the table that Professor Rubinfeld relied upon in his direct testimony. Rubinfeld WDT, at Exhibit 14.)

39. McFadden WDT, at ¶ 55 (Table 4, "Weighted, US users (future)" column, indicating \$1.67 valuation on [REDACTED]. Professor McFadden described this characteristic as [REDACTED] *Id.*, at Appendix B, p. B-viii.)

40. Rubinfeld Corrected WRT, at ¶ 192.

41. McFadden WDT, at ¶ 55 (Table 4, "Weighted, US users (future)" column).

42. *Id.*

assumption that these services can serve as benchmarks or corroborative evidence for the statutory rate is simply wrong, and his related conclusions are therefore fundamentally unreliable.

III. EVEN IF THESE SERVICES [REDACTED], THEY WOULD HAVE BEEN IN THE SHADOW OF THE STATUTORY RATE, AND PROFESSOR RUBINFELD MADE NO ATTEMPT TO ACCOUNT FOR THIS DISTORTIVE SHADOW.

20. As discussed above, Professor Rubinfeld assumes these services [REDACTED], and thus are good proxies for the statutory rate, despite all evidence to the contrary. But even if he were correct about [REDACTED], Professor Rubinfeld's methodology for analyzing these agreements would provide no benchmark or corroborating evidence for the terms a willing buyer and willing seller would agree upon in the absence of the statutory license. This is because these agreements all were made in the shadow of the statutory rate, and the royalty rates stated in the contracts therefore were strongly influenced by the statutory rate.

21. The per-performance rates paid by statutory webcasters in direct license agreements with copyright holders are highly influenced by the shadow of the existing statutory rate for the reasons we discussed in our direct testimony.⁴³ As we explained there, if, in the absence of a direct license agreement, the negotiating parties know that the webcaster will simply operate the same service with the same listenership under the statutory license, then the copyright holder has little incentive to offer a rate below the statutory rate, and the webcaster has little incentive to pay more than the statutory rate.⁴⁴ In such a case, all else equal, we would

43. Fischel / Lichtman WDT, at ¶¶ 46-48.

44. [REDACTED]

expect the parties to negotiate rates and terms approximately equivalent to those available under the statutory license, and hence, the agreement would provide no independent information about what a willing buyer and willing seller would agree upon in the absence of the statutory rate.⁴⁵

22. Because of this, some additional analysis must be done to identify and separate the shadow of the statutory rate. In our analysis of 29 license agreements signed by iHeartMedia and Pandora with various copyright holders, we did exactly that. We focused on the fact that the parties expected iHeartMedia or Pandora to substantially increase the number of performances of the licensors' music as a consequence of the agreement, and we showed how these "incremental" performances provide evidence regarding the rate that would be set outside the shadow of the statutory license.⁴⁶ In the case of iHeartMedia's agreement with Warner, for instance, fact witness testimony for both parties identified the expectations the parties held regarding these incremental performances, and these expectations indicated a fairly narrow range of royalty rates for these performances. iHeartMedia's expectations indicated a royalty rate of \$0.0005 per performance for these performances outside the shadow.⁴⁷ Warner's expectations indicated a slightly higher royalty rate of [REDACTED] per performance for these performances outside the shadow.⁴⁸

45. [REDACTED]

We noted that the direct license terms could be structured differently than those of the statutory license, but on average, the parties would agree to the same overall value. Fischel / Lichtman WDT, at ¶ 46 (note 47).

46. We discussed this concept in *Id.*, at ¶¶ 45-49.

47. *Id.*, at ¶ 51.

48. "iHeartMedia's Opposition to SoundExchange's Motions in Limine to Strike the Testimony of Professors Fischel and Lichtman Regarding the iHeartMedia-Warner Agreement and to Exclude the Written Rebuttal Testimony of Todd Kendall," April 6, 2015, at Appendix A.

23. Even Professor Rubinfeld has repeatedly recognized the importance of the shadow of the statutory rate in his testimony in this case,⁴⁹ and in his newly unredacted testimony he again recognized that “[w]hen a proposed benchmark license is directly impacted by the existence of the statutory license, this severely limits the value of that license as a comparable benchmark.”⁵⁰ However, in his analysis of the Apple agreements and the Section III.E agreements, he failed to account for the shadow of the existing statutory rates in any meaningful way. Thus, his analysis of these agreements is highly unreliable and does not corroborate his (or anyone else’s) claims regarding the rates that would have been set by willing sellers and willing buyers in the absence of the statutory rate.

24. Professor Rubinfeld did claim that the Apple agreements could, to a limited degree, be disentangled from the shadow, noting that while they were “admittedly negotiated in the shadow of the statutory license,” they “were not contemplated to be the centerpiece of either party’s case in the CRB.”⁵¹ However, Professor Rubinfeld provided no relevant support for this factual claim. Moreover, he failed to explain why not being the “centerpiece” of a party’s case in future regulatory proceedings means that rational actors engaged in negotiations would not be under the shadow of the *existing* statutory license, as we explained above. [REDACTED]

[REDACTED]

[REDACTED]⁵²

25. [REDACTED]

[REDACTED]

49. See, e.g., Rubinfeld WDT, at ¶ 24 (“the stated per-play rates in this agreement [iHeartMedia / Warner] are strongly anchored by and thus affected by the shadow of the statutory and ‘pureplay’ rates.”)

50. Rubinfeld Corrected WRT, at ¶ 185.

51. *Id.*, at Appendix 2, ¶ 8.

52. See, e.g., SNDEX0484318-326, at SNDEX0484320 [REDACTED]

[REDACTED] See also SNDEX0424611, SNDEX0426042-049, at 044 & 047.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 54
=

26. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

-
53. SNDEX0426042-049, at SNDEX0426048. *See, similarly, id.*, at SNDEX0426049 & SNDEX0426137.
54. SNDEX0264910.
55. SNDEX0259978-034, at 0259980.
56. SNDEX0414614.
57. SNDEX0210969-980, at 0210971. *See also* SNDX0259933 ([REDACTED])
58. SNDEX0210969-980, at 0210973.

27. Other than his claim about Apple, the only other service for which Professor Rubinfeld even addressed the issue of the shadow of the statutory rate is Beats' "The Sentence." Specifically, Professor Rubinfeld claimed that The Sentence rates are "more immune to the statutory shadow effect because [REDACTED]

[REDACTED] 59

28. We have seen no fact witness testimony supporting Professor Rubinfeld's claims regarding [REDACTED]

[REDACTED]
Moreover, [REDACTED] appears to be irrelevant to Professor Rubinfeld's analysis, because he stated that he focused explicitly on the rates set in The Sentence agreement under an assumption of [REDACTED] 60 In any case, [REDACTED] provides no basis for an exception to the general rule that the shadow of the statutory rate strongly influences the rates set in direct license agreements with services that can operate under the statutory license. [REDACTED]

[REDACTED] would merely be another factor that the negotiating parties would likely consider in setting license terms; it would not mean that the negotiating parties ignored the availability of the statutory license.

IV. PROFESSOR RUBINFELD PROVIDED NO SUPPORT FOR HIS ASSUMPTIONS ABOUT THE RELATIONSHIPS BETWEEN THESE AGREEMENTS AND OTHER AGREEMENTS BETWEEN THE SAME PARTIES.

29. Professor Rubinfeld analyzed the Apple and Section III.E agreements in isolation from other agreements negotiated between the exact same parties, and also assumed that all of

59. Rubinfeld Corrected WRT, at ¶ 185.

60. *Id.*, at ¶ 183.

the compensation discussed in these agreements is properly attributable to webcasting, as opposed to other, related products. Given the absence of fact witness testimony or adequate discovery from all parties to the agreements, it is difficult to fully evaluate these assumptions. However, a range of evidence calls the validity of these assumptions into serious question, further rendering Professor Rubinfeld's analysis unreliable.

30. First, it is unclear how the agreements Professor Rubinfeld considered relate to other agreements between the same parties. For instance, we understand that Beats, Spotify, and Rhapsody all offer fully on-demand streaming products for which they also license performance rights with the same set of record labels, and that in many cases, [REDACTED]

[REDACTED]⁶¹
We understand that Apple similarly has a number of different contractual relationships with the same record labels for other products besides non-interactive webcasting, such as downloads and music "locker" services, and as discussed below, [REDACTED]

31. From an economic perspective, it is inappropriate to interpret the contracts that Professor Rubinfeld relies upon without considering this broader context. For instance, if a given copyright holder sought additional royalty payments to license the services analyzed by Professor Rubinfeld in exchange for offering more favorable terms for some other service or in some other non-webcasting agreement, the webcaster might have been willing to accept such a deal – yet clearly in that situation it would be inappropriate to analyze the webcasting license in isolation. This is a natural concern from an economic perspective, in which it is common to

61. See, e.g., "Amended and Restated Subscription Streaming Services Agreement" between Warner and Beats dated January 20, 2014 (SNDEX0057757-833), "Content Integration Agreement" between Rhapsody and Sony dated April 1, 2014 (SNDEX0363047-187).

evaluate contracts and relationships between parties as a whole, yet Professor Rubinfeld did not address this concern at all in his testimony. And, as we pointed out above, no fact testimony was made available to help us address this concern, either.

32. This problem is particularly salient in the case of Apple for several reasons. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Therefore, some portion of the compensation nominally attributed to webcasting in these agreements may, from an economic perspective, be properly attributable to those other implicated services.

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. [REDACTED]

[REDACTED]

[REDACTED]

62. SNDEX0119035-6.
63. *Id.*, at SNDEX0119035.
64. SNDEX0119099-101.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

35. It is also unclear whether all of the compensation paid by Apple under the agreements analyzed by Professor Rubinfeld is appropriately attributable to webcasting. For instance, [REDACTED]

[REDACTED]⁶⁶ Presumably, Apple sought this contract term [REDACTED]
[REDACTED]
[REDACTED]. This raises the question of whether some part of the compensation Apple paid under the agreements analyzed by Professor Rubinfeld is more appropriately attributable to [REDACTED]
[REDACTED], not webcasting. Similarly, in the context of negotiations, Apple and the record labels appear to have [REDACTED]
[REDACTED].⁶⁷ Again, without a clear understanding of the context of the webcasting negotiations, it is difficult to reliably answer the question of what the royalties paid in the agreements Professor Rubinfeld analyzed are properly attributable to.

36. A similar question applies specifically to the [REDACTED] included in the Apple agreements. Sony and Warner received [REDACTED]

65. *Id.*, at SNDEX0119099.

66. "Trial and Experimental Webcasting Service License Agreement," June 5, 2013, at p. 4 (SNDEX0118989-011, at 0118992) and "Webcasting Service License Agreement," June 5, 2013, at p. 4 (SNDEX0119037-055, at 0119040) ([REDACTED]).

67. *See, e.g.*, SNDEX0303278-305, at 0303303 [REDACTED]

[REDACTED]) *See also* SNDEX0305699-705, at 0305701 ([REDACTED])

[REDACTED] *See also* SNDEX0424995-209, at 0425004 [REDACTED]
[REDACTED]

██████████ from Apple in the context of their webcasting agreements, and these ██████████ form a very substantial share of the compensation paid to the labels in Professor Rubinfeld's analysis.

Absent the ██████████, Professor Rubinfeld's calculations indicate royalty rates less than ██████████ per performance.⁶⁸ No ██████████ appears in the Apple-Universal webcasting agreement, ██████████

██████████⁶⁹ In the Warner and Sony agreements, the ██████████
██████████. In any case, the ██████████ again raises questions about the relationship between ██████████

37. ██████████

38. ██████████

68. Rubinfeld WRT, Appendix 2B & 2C, row "X" (██████████").

69. SNDEX0119102.

70. SNDEX0214404-421, at 0214404-5.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. As discussed above, Apple [REDACTED], and even if [REDACTED], average royalty rates like these would be influenced by the shadow of the statutory rate. Nevertheless, at the very least, [REDACTED] one cannot reliably analyze the Apple agreements without making assumptions regarding the relationship between these agreements and other agreements, and regarding what portion of compensation paid by Apple under the agreements is properly attributable to webcasting. These assumptions make a tremendous difference in the calculation of the average per-performance rate, and Professor Rubinfeld provided no basis to conclude that the assumptions he made along these lines are plausible or correct.

**V. PROFESSOR RUBINFELD'S ROYALTY RATE CALCULATIONS
RELATING TO APPLE ARE UNRELIABLE AND INFLATED.**

A. Professor Rubinfeld improperly relied upon *ex post* performance.

40. For the Section III.E services, Professor Rubinfeld's analysis consists of merely noting certain terms specified in the agreements. By contrast, in the case of Apple, Professor Rubinfeld performed a series of calculations regarding [REDACTED]

71. See SNDEX0186409-415, at 0186415 ([REDACTED]), SNDEX0186973-993, at 0186979 ([REDACTED]), & SNDEX0305126-132, at 0305132 ([REDACTED]).

72. SNDEX0488703-712, at 0488707. See also SNDEX0494103-109, at 0494103.

[REDACTED] paid under the agreements, [REDACTED]

[REDACTED] Professor Rubinfeld did not explain why *ex post* performance was the appropriate way to analyze Apple, but not appropriate in the cases of the Section III.E services.

41. As we discussed in our original rebuttal testimony, the use of *ex post* performance as a basis for determining the parties' expectations is fundamentally flawed from an economic perspective.⁷³ This is particularly the case for the Apple agreements, which as noted above

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

42. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

B. Professor Rubinfeld failed to appropriately account for [REDACTED]

[REDACTED]

73. Fischel / Lichtman WRT, at ¶¶ 104-5.

74. APL-CRB-000001-022, at 12.

75. [REDACTED]

43. Despite his claims that *ex post* performance is the appropriate way to analyze agreements like those with Apple, Professor Rubinfeld made exceptions to this rule in his analysis of [REDACTED], and these exceptions serve to very substantially increase his effective royalty rate calculations. Specifically, Professor Rubinfeld

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁷⁶

44. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁷⁷ Professor Rubinfeld's selective reliance on his own assumptions about [REDACTED], rather than actual *ex post* performance, therefore substantially inflated his estimated royalty rate.

45. The license agreements relied upon by Professor Rubinfeld also provide Apple with [REDACTED]

[REDACTED]⁷⁸ Again, however, Professor Rubinfeld did not include [REDACTED]
[REDACTED], and that, too, inflated his calculated royalty rate, despite the fact

76. Rubinfeld WRT, at Appendix 2, ¶¶ 28 & 40. [REDACTED]

77. [REDACTED]

78. "Trial and Experimental Webcasting Service License Agreement," June 5, 2013, at p. 4 (SNDEX0118989-011, at 0118992) and "Webcasting Service License Agreement," June 5, 2013, at p. 4 (SNDEX0119037-055, at 0119040) [REDACTED]

that [REDACTED]

royalty rate.⁷⁹

46. Exhibits C-1 and C-2 demonstrate for Sony and Warner, respectively, how Professor Rubinfeld's calculations change under a proper accounting for [REDACTED]. The first column in each exhibit simply replicates Professor Rubinfeld's calculations. In the second column, we updated these calculations under Professor Rubinfeld's assumptions [REDACTED]. In the last column, we adjusted Professor Rubinfeld's calculations for [REDACTED], as described above. The resulting effective average royalty payment per performance is [REDACTED] for Sony and [REDACTED] for Warner, both of which are far lower than the rates Professor Rubinfeld calculated [REDACTED]

[REDACTED]⁸⁰

47. Professor Rubinfeld also analyzed [REDACTED]⁸¹ As noted above, the agreements [REDACTED] but Professor Rubinfeld simply

79. SNDEX0487131 [REDACTED]

80. Rubinfeld Corrected WRT, at Appendix 2B & 2C (row "Y").

81. *Id.*, at Appendix 2, ¶¶ 22 & 34.

[REDACTED]

48. As discussed above, our view is that Apple's service [REDACTED], and even if [REDACTED], these average rates reflect the shadow of the statutory rate. Nevertheless, the above calculations show that, even under his own assumptions, Professor Rubinfeld's calculations are unreliable and do not provide confirmatory evidence for his conclusions. Moreover, as noted previously, Professor Rubinfeld's calculations also appear to assume that all compensation paid under the agreements is properly attributable to webcasting. If in fact some portion of the compensation is appropriately attributable to other music services, then the proper average rate calculations would be even lower. [REDACTED]

[REDACTED]

[REDACTED]

C. Professor Rubinfeld's analysis of the Apple agreements is inconsistent with the parties' expectations at the time of the agreements.

49. Professor Rubinfeld's conclusions are also at odds with available information on the pre-agreement forecasts made by the parties negotiating the agreements, which is the more appropriate way to analyze the agreements from an economic perspective.⁸³ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

82. [REDACTED]

[REDACTED]

[REDACTED]

50. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

51. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

83. Fischel / Lichtman WRT, at ¶¶ 103-104.

84. [REDACTED]

85. APL-CRB-000001-022, at 12 & 13.

86. [REDACTED]

87. APL-CRB-000001-022, at 10.

[REDACTED]

52. This calculation does not account for an important factor: besides operating a streaming music service, Apple is also the largest music retailer in the U.S.⁹⁰ [REDACTED]

[REDACTED]

53. [REDACTED]

[REDACTED]

88. [REDACTED]

89. [REDACTED]

90. Apple Press Release, "iTunes Store Top Music Retailer in the US," April 3, 2008, accessed at <https://www.apple.com/pr/library/2008/04/03iTunes-Store-Top-Music-Retailer-in-the-US.html>.

91. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

54. More generally, because Apple is a major seller of music, [REDACTED]
[REDACTED] would give it an incentive to accept a royalty rate (and the record labels leverage to demand a royalty rate) higher than the rate that any conventional webcaster would pay. Even putting aside [REDACTED]
[REDACTED], this is an important reason why the expected royalty rates calculated above likely overstate the relevant rate that most willing buyers and willing sellers [REDACTED]
[REDACTED] would agree upon.

55. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

92. *Id.* [REDACTED]

93. *See, e.g.*, SNDEX0425533-537, at 0425536 ([REDACTED]
[REDACTED] and 0426045 ([REDACTED]
[REDACTED]). *See also* SNDEX0214404-421, at 0214408 ([REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]⁹⁴

56. Therefore, the parties' own expectations provide no support for Professor Rubinfeld's conclusions regarding the Apple agreements. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. Professor Rubinfeld overstated the appropriate [REDACTED] implications of the Apple agreements.

57. The Apple agreements provide for compensation based on [REDACTED]

[REDACTED]

[REDACTED]⁹⁵ In the monthly royalty statements to date provided in discovery, [REDACTED]

[REDACTED]⁹⁶ Professor Rubinfeld's analysis, as discussed above, focuses on [REDACTED]

[REDACTED]. However, Professor Rubinfeld also separately considered [REDACTED]
[REDACTED]

94. Rubinfeld Corrected WRT, at Appendix 2B & 2C (row "Y").

95. "Trial and Experimental Webcasting Service License Agreement," June 5, 2013, at p. 4 (SNDEX0118989-011, at 0118992) and "Webcasting Service License Agreement," June 5, 2013, at p. 4 (SNDEX0119037-055, at 0119040).

96. [REDACTED]

[REDACTED]

[REDACTED]⁹⁷
[REDACTED]

58. [REDACTED] our view is that [REDACTED]
[REDACTED] is not a reliable measure of what willing buyers and willing sellers would agree upon
for a service eligible for the statutory license, absent the statutory rate [REDACTED]

[REDACTED]

[REDACTED]⁹⁸
[REDACTED]

59. Moreover, Professor Rubinfeld's rationale for assuming [REDACTED]
[REDACTED], is based on the fact that, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

60. Professor Rubinfeld claimed that, during the period he analyzed, [REDACTED]
[REDACTED]
[REDACTED]⁹⁹ This statement appears to involve an error; in fact, [REDACTED]
[REDACTED]

97. Rubinfeld Corrected WRT, at Appendix 2, ¶¶ 27 & 39.

98. See, e.g., SNDEX0305699-705, at 0305700 [REDACTED]
[REDACTED]

99. Rubinfeld Corrected WRT, at Appendix 2, ¶¶ 27 & 39.

100. Id., at Appendix 2B & 2C. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] provide no basis to determine the willingness-to-pay or willingness-to-accept of the parties to the negotiation.

61. [REDACTED] Professor Rubinfeld's attempt to increase the stated [REDACTED] rate in the contracts on this basis makes no sense.

[REDACTED]

[REDACTED]

[REDACTED]

We are aware of no economic basis for such a conclusion.

101. *Id.* [REDACTED]

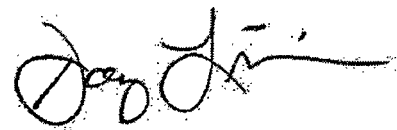
I declare under penalty of perjury that the foregoing is true and correct.



Daniel R. Fischel

4-20-2015

Date



Douglas G. Lichtman

April 20, 2015

Date

CERTIFICATE OF SERVICE

I, Caitlin S. Hall, hereby certify that a copy of the foregoing PUBLIC version of iHeartMedia's Supplemental Rebuttal Testimony of Daniel R. Fischel and Douglas G. Lichtman and Exhibits has been served on this 21st day of April 2015 on the following persons:

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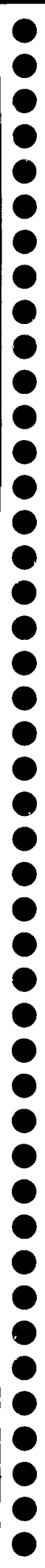
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PUBLIC

Exhibit A

Exhibit Redacted In Its Entirety

PUBLIC

Exhibit B

Exhibit Redacted In Its Entirety

PUBLIC

Exhibit C

Exhibit Redacted In Its Entirety

PUBLIC

Exhibit D

Exhibit Redacted In Its Entirety



APPENDIX A: MATERIALS RELIED UPON

Copyright Royalty Board Documents

United States Copyright Royalty Judges, In re Determination of Royalty Rates and Terms For Ephemeral Recording And Digital Performance Of Sound Recordings (Web IV), Docket no. 14-CRB-0001-WR (2016-2020), "Amended Testimony of Daniel R. Fischel and Douglas G. Lichtman," January 12, 2015

United States Copyright Royalty Judges, In re Determination of Royalty Rates and Terms For Ephemeral Recording And Digital Performance Of Sound Recordings (Web IV), Docket no. 14-CRB-0001-WR (2016-2020), "Rebuttal Testimony of Daniel R. Fischel and Douglas G. Lichtman," February 22, 2015

United States Copyright Royalty Judges, In re Determination of Royalty Rates and Terms For Ephemeral Recording And Digital Performance Of Sound Recordings (Web IV), Docket no. 14-CRB-0001-WR (2016-2020), "Corrected Testimony of Daniel L. Rubinfeld," October 6, 2014

United States Copyright Royalty Judges, In re Determination of Royalty Rates and Terms For Ephemeral Recording And Digital Performance Of Sound Recordings (Web IV), Docket no. 14-CRB-0001-WR (2016-2020), "Corrected Written Rebuttal Testimony of Daniel L. Rubinfeld," February 22, 2015

United States Copyright Royalty Judges, In re Determination of Royalty Rates and Terms For Ephemeral Recordings And Digital Performance Of Sound Recording (Web IV), Docket no. 14-CRB-0001-WR (2016-2020), "Report of David Blackburn, Ph.D.," October 6, 2014

Copyright Royalty Board, In the Matter of Determination of Rates and Terms for Digital Performance in Sound Recordings and Ephemeral Recordings (Web IV), Docket No. 14-CRB-0001-WR, "Testimony of Daniel L. McFadden," October 6, 2014

iHeartMedia's Opposition to SoundExchange's Motion in Limine to Strike the Testimony of Professors Fischel and Lichtman Regarding the iHeartMedia-Warner Agreement and to Exclude the Written Rebuttal Testimony of Todd Kendall, April 6, 2015

Deposition Transcripts

"Video Examination of Robert Wheeler," April 17, 2015

Production Documents

APL-CRB-000001 – 022

“Restated Digital Product Agreement” between Universal International Music B.V. and Nokia Corporation dated March 1, 2013 (SNDEX0023531 – 659)

“Amended and Restated Subscription Streaming Services Agreement” between Warner and Beats Dated January 20, 2014 (SNDEX0057757 – 833)

“Trial and Experimental Webcasting Service License Agreement,” June 5, 2013 (SNDEX0118989 – 011)

SNDEX0119007

SNDEX0119035 – 036

“Webcasting Service License Agreement,” June 5, 2013 (SNDEX0119037 – 055)

SNDEX0119056

SNDEX0119099 - 101

SNDEX0119102

SNDEX0119103

SNDEX0119104

SNDEX0119110

SNDEX0119111

SNDEX0119112

SNDEX0119113

SNDEX0119114

SNDEX0119115

SNDEX0119117

SNDEX0119118

SNDEX0119119

SNDEX0119120

SNDEX0119121

SNDEX0119122

SNDEX0119123

SNDEX0119124

SNDEX0119124

SNDEX0119127

SNDEX0122098

"MFT Update to WMG," Spotify presentation dated August 12, 2014 (SNDEX0126529 – 537)

SNDEX0186409 – 415

SNDEX0186973 – 993

SNDEX0210969 – 980

SNDEX0214404 – 421

SNDEX0214503

SNDEX0259933

SNDEX0259978 – 034

SNDEX0264910

SNDEX0303303

SNDEX0305126 – 132

SNDEX0305699 - 705

SNDEX0310170

SNDEX0316165

SNDEX0316166

SNDEX0316167

SNDEX0316168

SNDEX0316221

SNDEX0316222

SNDEX0318084

SNDEX0318361

SNDEX0318365

SNDEX0318369

SNDEX0335573 – 574

SNDEX0337901 - 904

SNDEX0338698 - 700

SNDEX0340252 – 254

SNDEX0340255

SNDEX0340788 – 790

“Content Integration Agreement” between Rhapsody and Sony dated April 1, 2014
(SNDEX0363047 – 187)

SNDEX0372963 - 965

SNDEX0411140

SNDEX0414614

SNDEX0424611

SNDEX0424991

SNDEX0424995 - 209

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SNDEX0425875

SNDEX0426042 - 049

SNDEX0426048

SNDEX0426137

SNDEX0431766 – 770

“Letter Agreement” between Warner Music Inc. and Rhapsody International Inc., April 21, 2014 (SNDEX0144893-7)

SNDEX0451152 – 159

SNDEX0484320

SNDEX0487131

SNDEX0488703 - 712

SNDEX0494103 - 109

SPOT000001 – 036

SPOT000047 – 054

SEC Filings

Apple Inc.’s Form 10-K for the Fiscal Year Ended September 27, 2014

Websites

17 USC § 114 (j) (13), retrieved from <https://www.law.cornell.edu/uscode/text/17/114>

Mark Mulligan (2015) “The Case for a Freemium Reset”

<https://musicindustryblog.wordpress.com/2015/03/11/the-case-for-a-freemium-reset/>

Apple Press Release, “iTunes Store Top Music Retailer in the US,: April 3, 2008, accessed at <https://www.apple.com/pr/library/2008/04/03iTunes-Store-Top-Music-Retailer-in-the-US.html>

All other documents and sources cited in the report and exhibits.



Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of)
)
)

DETERMINATION OF ROYALTY RATES) Docket No. 14-CRB-0001-WR
FOR DIGITAL PERFORMANCE IN SOUND) (2016-2020)
RECORDINGS AND EPHEMERAL)
RECORDINGS (WEB IV))
_____)

DECLARATION AND CERTIFICATION OF CAITLIN C. HALL
ON BEHALF OF IHEARTMEDIA, INC.

1. I am one of the counsel for iHeartMedia, Inc. (“iHeartMedia”) in this proceeding, and I submit this Declaration in support of the restricted version of the Supplemental Rebuttal Testimony of Daniel R. Fischel and Douglas G. Lichtman and accompanying documents.

2. On October 10, 2014, the CRB adopted a Protective Order that limits the disclosure of materials and information marked “RESTRICTED” to outside counsel of record in this proceeding and certain other parties described in subsection IV.B of the Protective Order. *See* Protective Order (Oct. 10, 2014). The Protective Order defines “confidential” information that may be labeled as “RESTRICTED” as “information that is commercial or financial information that the Producing Party has reasonably determined in good faith would, if disclosed, either competitively disadvantage the Producing Party, provide a competitive advantage to another party or entity, or interfere with the ability of the Producing Party to obtain like information in the future.” *Id.* The Protective Order further requires that any party producing such confidential information must “deliver with all Restricted materials an affidavit or declaration . . . listing a description of all materials marked with the ‘Restricted’ stamp and the basis for the designation.” *Id.*

3. I submit this declaration describing the materials iHeartMedia has designated "RESTRICTED" and the basis for those designations, in compliance with Sections IV.A of the Protective Order. I have determined to the best of my knowledge, information and belief that the materials described below, which are being produced to outside counsel of record in this proceeding, contain confidential information.

4. The confidential information comprises or relates to information designated RESTRICTED by other participants in this proceeding. iHeartMedia has designated such information as RESTRICTED to maintain its confidentiality in accordance with the Protective Order's command to "guard and maintain the confidentiality of all Restricted materials." Protective Order at 2.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that the foregoing is true and correct.

April 21, 2015

Respectfully submitted,

/s/ Caitlin S. Hall

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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of)
)
)

DETERMINATION OF ROYALTY RATES) Docket No. 14-CRB-0001-WR
FOR DIGITAL PERFORMANCE IN SOUND) (2016-2020)
RECORDINGS AND EPHEMERAL)
RECORDINGS (WEB IV))
)

**REDACTION LOG FOR iHEARTMEDIA'S SUPPLEMENTAL TESTIMONY OF
DANIEL R. FISCHEL AND DOUGLAS G. LICHTMAN**

iHeartMedia hereby submits the following list of redactions from iHeartMedia's Supplemental Rebuttal Testimony of Daniel R. Fischel and Douglas G. Lichtman filed April 21, 2015, and the undersigned certifies, in compliance with 37 C.F.R. § 350.4(e)(1), and based on the Declaration of Caitlin S. Hall submitted herewith, that the listed redacted materials are properly designated confidential and "RESTRICTED."

Document	Page/Paragraph/ Line	General Description
Supplemental Rebuttal Testimony of Fischel and Lichtman	p. 1, para. 1, lines 7-8, 9	Contains information designated restricted by other participants
	p. 2, para. 2, lines 8-10	Contains information designated restricted by other participants
	p. 2, fn. 7, lines 2-3	Contains information designated restricted by other participants
	pp. 3-4, para. 4, lines 7, 8-9, 10, 11, 13, 19-20, 25-27	Contains information designated restricted by other participants
	p. 4, Section II Heading	Contains information designated restricted by other participants
	pp. 4-5, para. 5, lines 1-2, 5-9	Contains information designated restricted by other participants

Document	Page/Paragraph/ Line	General Description
	p. 5, fn. 13, lines 1-7	Contains information designated restricted by other participants
	p. 5, para. 6, lines 1-2, 3, 5-7	Contains information designated restricted by other participants
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	p. 7, para. 10, lines 2, 3-10	Contains information designated restricted by other participants
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Exhibit B	Redacted in its Entirety	Contains information designated restricted by other participants
Exhibit C	Redacted in its Entirety	Contains information designated restricted by other participants
Exhibit D	Redacted in its Entirety	Contains information designated restricted by other participants

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Respectfully submitted,

/s/ Caitlin S. Hall

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